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Summary record of the 18th meeting
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Chair: Mr. Saikal ..... (Afghanistan)

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The meeting was called to order at 3.05 p.m.

Agenda item 74: Promotion and protection of human rights (*continued*)

(a) Implementation of human rights instruments (*continued*) (A/73/40, A/73/44, A/73/48, A/73/56, A/73/140, A/73/207, A/73/264, A/73/281, A/73/282 and A/73/309)

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(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/73/299, A/73/308, A/73/330, A/73/332, A/73/363, A/73/380, A/73/386, A/73/397, A/73/398 and A/73/404)

(d) Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action (*continued*) (A/73/36 and A/73/399)

1. **Mr. Modvig** (Chair of the Committee against Torture) said that 2018 marked the seventieth anniversary of the Universal Declaration of Human Rights, a major human rights instrument that banned torture. The Convention against Torture was one of the strongest tools available in the fight against torture, providing not only for the prohibition of torture, but also for measures to prevent torture and provide redress to victims.

2. There were currently 164 States parties to the Convention, following ratification by the Bahamas and the Gambia and the accession of the Marshall Islands in 2018. The remaining United Nations Member States should become party to the Convention in order to collaborate with the Committee in their attempts to eradicate torture. The Committee remained grateful to the Convention against Torture Initiative, which played a crucial role in increasing the number of States parties to the Convention.

3. The failure of some States parties to respect their reporting obligations had been addressed by the Committee in three main ways. First, the Committee had twice in its history reviewed the implementation of the Convention by a State party which had not submitted its initial report. At its sixty-fourth session, a decision to that effect had prompted the delegation to submit its report and to become the first State party to participate in the Committee via videoconference. While videoconferencing was not ideal for constructive dialogue, such options could be used in cases when direct attendance in Geneva was impossible and the alternative would be no dialogue whatsoever. Second, the Committee had decided to offer a simplified reporting procedure for long-overdue initial reports. That decision had been positively received by most States even though it created additional work for the Committee and the Secretariat. To increase the use of simplified reporting procedures, as the Committee had repeatedly been encouraged to do, budget allocations to its secretariat and subcommittees would need to increase. Third, the Committee had convened a meeting with States parties yet to have submitted initial reports in order to identify the challenges they faced. During the meeting, participants had discussed the option of using the simplified reporting procedure for initial reports. After the meeting, several States parties had committed to submitting their initial report within one year.

4. In accordance with article 22 of the Convention, the Committee could also receive individual communications. Since 1989, it had registered 885 individual complaints concerning 40 States parties. Of those, 265 had been discontinued and 104 had been found inadmissible. Final decisions on 365 communications had been issued, of which the Committee had found violations of the Convention in 143 cases, corresponding to 39 per cent of communications. There was currently a backlog of 160 individual complaints and the Committee was prioritizing all communications that were ready for review. It was vital, however, for the Secretariat to be provided with additional staff resources, otherwise the Committee would be unable to clear its backlog.

5. The Committee had established an intersessional working group to deal with communications more effectively. In developing procedures in that regard, the Committee was also building on the experience of the Human Rights Committee. Although the format of the intersessional working group was not in its final form, the initiative would improve case-processing capacity.

6. The Committee continued to assess States parties' implementation of its decisions on individual complaints by evaluating written follow-up reports and engaging the delegation concerned in a constructive dialogue. It was estimated that 45 per cent of the follow-up recommendations to State party reports had been

partially implemented. Recent research indicated that across all human rights treaty bodies, 23 per cent of recommendations on individual communications were being implemented. While an implementation rate of 100 per cent would be desirable, by fulfilling treaty body recommendations, States parties were at least making headway towards the eradication of torture.

7. The Committee's recent adoption of general comment No.4 on the implementation of article 3 of the Convention in the context of article 22 would guide and facilitate compliance with the principle of non-refoulement, which remained a prevailing theme in individual complaints. Prior to its adoption, extensive consultations had been held with States, civil society and other relevant entities, in accordance with the guidelines agreed and aligned across treaty bodies regarding the consultation process for draft general comments.

8. The Committee had carried out 10 confidential inquiries since it had been established. The inquiries procedure remained a key tool for responding to allegations of systematic practice of torture in States parties.

9. As recommended by the General Assembly in its resolution 68/268 and at the Annual Meeting of Chairpersons of the Human Rights Treaty Bodies, the Committee regularly reviewed its working methods, with a view to harmonizing them with other treaty bodies and promoting the full implementation of the Convention. In 2017, the Assembly had not respected the provision under resolution 68/268 to allocate sufficient resources to the treaty body system to ensure its functioning and the effective processing of the backlog of cases and reports. On the contrary, it had allocated additional meeting time but not the staff resources needed, thereby affecting the entire treaty body system. He called on Member States to support the draft resolution which endorsed the conclusions and recommendations contained in the report of the Secretary-General on the status of the human rights treaty body system (A/73/309), in particular, recommendations on the need for resources to be commensurate to the increasing workload and for webcasting of treaty body sessions of all Committees to be funded from the regular budget.

10. During its sixty-fourth session, the Committee had discussed the treaty body strengthening process and related proposals, following a suggestion made during the Annual Meeting of Chairpersons for the ten treaty bodies to develop a common position, which would be prepared in the first half of 2019 and submitted in time for the review of the effectiveness of the human rights treaty body system in 2020.

11. United Nations anti-torture mandate holders, specifically the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, had prioritized cooperation and coordination through joint activities and statements. On 26 June 2018, they had issued a joint statement to mark the United Nations International Day in Support of Victims of Torture, joined for the first time by the Committee for the Prevention of Torture in Africa, the Inter-American Commission on Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

12. He called on States parties to endorse the contributions of national human rights institutions, national preventive mechanisms and civil society organizations, which were critical to the Committee's work. He encouraged them to work with the Committee to make sure that no partners risked being subjected to reprisals or sanctions for collaborating with the Committee.

13. **Mr. Forax** (Observer for the European Union) said that the European Union strongly supported the work of the Committee against Torture, which every year brought the international community closer to universal ratification of the Convention. Despite its increasing workload, the Committee had managed to share its expertise at various meetings and seminars relevant to its mandate. He asked what further measures could be taken to lighten the Committee's workload and reduce the disturbingly high number of States parties that failed to comply with their reporting obligations under article 19 of the Convention.

14. **Ms. Diedricks** (South Africa) said that her Government welcomed the introduction of the simplified reporting procedure following complaints by many States about the onerous reporting burden. She took note of the reference in the Committee's report (A/73/44) to the first joint meeting between the Committee and judges and secretariats from the European Court of Human Rights and the Inter-American Court of Human Rights, held in December 2017. The Committee would benefit from similar interactions in the future, as it could discuss issues of common interest and share information on individual complaints procedures and jurisprudence.

15. **Mr. Kashaev** (Russian Federation) said that the consideration of his country's sixth periodic report in

July 2018 had exemplified several problems that his delegation had referred to in the past. The Committee had again demonstrated its arbitrary interpretation of the provisions of the Convention by raising issues outside its mandate. Its attempts to interfere in areas in which it lacked expertise, such as territorial sovereignty and the settlement of disputes between States, were unacceptable and a cause for concern. Committee members would also do well to remember that general comments were expert opinions by members of treaty bodies but imposed no additional obligations on States. Furthermore, his delegation had found the simplified reporting procedures to be less effective and focused, since it had often had to repeat information in its replies that it had already provided in its submissions. It was a waste of resources to prepare replies under the simplified procedure if experts lacked even a superficial knowledge of the material submitted to them. He wondered whether it might be necessary to draft a code of conduct, not least to encourage good discipline among treaty body experts.

16. **Mr. McElwain** (United States of America) said that torture was contrary to the founding principles of the United States and the universal values of the international community. The United States had played a key role in bringing the Convention against Torture into force and remained a leader in efforts to end torture worldwide and address the needs of torture victims. Torture was prohibited under customary international law, including the Geneva Conventions of 1949 and the International Covenant on Civil and Political Rights, to which the United States was a party. The United States prohibited, without exception or equivocation, all forms of torture and cruel, inhuman and degrading treatment or punishment.

17. His Government continued to support the United Nations Voluntary Fund for Victims of Torture and other programmes providing for assistance and counselling services to victims of torture. Moreover, the United States supported efforts by other nations, international bodies and non-governmental organizations to eradicate torture through the provision of human rights training to security forces, the improvement of prison and detention conditions and the development and enforcement of strong laws against torture. His delegation called on all countries to meet their obligations and commitments to prevent torture, investigate all credible allegations of torture and hold accountable individuals found responsible for such acts.

18. **Ms. Ochsri** (Liechtenstein) said that her delegation appreciated the adoption of general comment No. 4 since the principle of non-refoulement was one of the cornerstones of the international regime against torture and in the promotion of human rights. She requested more details on current global trends related to non-refoulement, especially in the context of international migration.

19. **Mr. Olsen** (Denmark) said that his country welcomed the Committee's decision to adopt guidelines on the receipt and handling of allegations of reprisals, which included clear recognition of the value of the Guidelines against Intimidation or Reprisals. He wondered what States parties could do to more effectively respond to continued reports of intimidation and reprisals against individuals and groups.

20. The report (A/73/44) indicated that the simplified reporting procedure had significantly increased the Committee's workload because of the need to draft a list of issues prior to reporting. He asked what measures could be taken to reduce that burden, without undermining the Committee's capacity to help States parties to fulfil their obligations.

21. **Ms. Nassrullah** (Iraq) said that her country was a party to the Convention against Torture and a member of the Group of Friends of the Convention against Torture Initiative. All forms of cruel, inhuman or degrading treatment were prohibited under the Constitution of Iraq, while its Criminal Code prohibited all forms of torture by law enforcement officers or other individuals investigating criminal activity. Furthermore, the 2003 law on the oversight of prisons and detention centres provided that all prisoners and detainees must be held in accordance with international standards, while the 1994 law on the conduct of State and public sector employees provided for the formation of a committee to investigate all allegations of assaults or torture perpetrated by public officials or other individuals responsible for the provision of public services. Individuals accused of those offences could be dismissed from their positions and brought before the courts, which imposed appropriate penalties on offenders.

22. Allegations of torture could be communicated to numerous Iraqi offices and authorities, including the human rights departments at the Ministries of the Interior, Justice, Defence, and Labour and Social Affairs, the Office of the Public Prosecutor, including through its offices located in Iraqi detention centres, the Commission on Integrity, the High Commission for Human Rights and the Kurdistan Region Independent Human Rights Commission, as well as through Iraqi civil society organizations. Furthermore, under Iraqi law, a victim of any act of torture or mistreatment was entitled to sue for damages before the courts in respect of any physical or psychological harm suffered as a result of that act.

23. **Mr. El Mkhantar** (Morocco) said that Morocco had been one of the founding members of the Convention against Torture Initiative, launched in March 2014 to promote the universal ratification of the Convention. In October 2018, the Initiative had arranged a workshop in Dakar on legislative drafting techniques for anti-torture laws, the sixth event of its kind to be held in Africa. Countries of the Initiative had been able to build their capacity and exchange best practices, supported by numerous partners and the increasing number of countries that had ratified the Convention. Although the approach employed by the Initiative, which combined cooperation and persuasion, had proven effective, States must follow up ratification with the establishment of a national legislative framework that translated objectives into reality. Morocco had entered into partnership initiatives with several countries, with the aim of improving ratification of and compliance with the Convention through exchanges of experiences and best practices.

24. **Ms. Charrier** (France) said that her delegation commended efforts by the Committee to encourage States parties to comply with the Convention and by the Subcommittee to promote the development of national preventive mechanisms. While welcoming the number of new ratifications of the Convention and its Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2018, she encouraged Member States which had not yet done so to sign and ratify the two instruments. France would fight to prevent the impunity of perpetrators of torture and cruel, inhuman and degrading treatment or punishment and defend all victims of such acts.

25. **Mr. Modvig** (Chair of the Committee against Torture) said that the simplified reporting procedure could never entirely solve the problem of the reporting burden faced by Member States. If, for example, the human rights treaty bodies did not coordinate sufficiently or set inflexible deadlines, Member States might have to submit numerous reports in the same calendar year. The reports under the simplified procedure could also be made even more focused.

26. Although the new procedures burdened the Secretariat with the task of developing a list of issues prior to reporting, that bottleneck was frontloaded. In the context of the treaty body strengthening process, the Committee had considered numerous ways of reducing experts' workload or increasing capacity. It currently reviewed 18 State party reports per year, but if all countries ratified the Convention and began reporting every four years, that number would increase to about 50. Altnough there were viable solutions, such as no longer involving all experts in every issue, those would not necessarily reduce each expert's workload.

27. Earlier, he had mentioned three initiatives to address late reporting: reviewing States parties before they had submitted their initial reports, including by video link; introducing the simplified reporting procedure for long-overdue initial reports; and meeting certain States parties to identify challenges they faced. In addition, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had funds available for smaller Member States struggling to submit reports in time owing to a lack of capacity. Member States could also draw on support provided by the Convention against Torture Initiative — a resource not available to other human rights treaty bodies.

28. Turning to global migration trends, he said that procedures to protect immigrants were sometimes superficial and failed to provide necessary protection to persons who should be granted refugee status. Torture victims were often not properly identified among asylum seekers, did not receive appropriate treatment and lived in unacceptable conditions.

29. He disagreed that the Committee had exceeded its mandate during its consideration of the Russian Federation periodic report. Indeed, both the Russian delegation and members of the Committee had previously stated that the dialogue had been very useful.

30. **Sir** Malcolm **Evans** (Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), introducing the eleventh annual report of the Subcommittee (CAT/C/63/4), said that the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been ratified by 88 countries. While that was an impressive number, almost half of the States parties to the Convention had yet to commit themselves to the prevention of torture through the Optional Protocol system. The best way to fulfil the obligation under the Convention to take preventive measures was through the ratification of the Optional Protocol. Although States were routinely called upon during universal periodic reviews to ratify the Optional Protocol, the General Assembly did not accord equal priority to the ratification of the Optional Protocol in its resolutions on torture. Equal importance should be given to prevention and prohibition in the forthcoming resolution.

31. Afghanistan, Australia, Sri Lanka and the State of Palestine had ratified or acceded to the Optional Protocol in the past year. Those countries were obliged to establish national preventive mechanisms within one year of ratification, with the exception of Australia,

which had made a declaration under article 24 of the Optional Protocol postponing its obligation. It was vital for the Subcommittee to establish contact with countries as soon as possible to ensure that effective mechanisms were put in place. Ideally, the Subcommittee should make a short visit to all newly ratifying States as a matter of routine, but the lack of resources prevented it from always doing so. More than 60 national preventive mechanisms had been established, and Argentina and Cambodia had recently been removed from the list of countries in which the establishment of mechanisms was significantly overdue. Nevertheless, the list remained too long, comprising Benin, Bosnia and Herzegovina, Burkina Faso, Burundi, Chile, the Democratic Republic of the Congo, Gabon, Liberia, Nauru, Nigeria, Panama and the Philippines. Although the obligation to establish a national preventive mechanism was a central element of the Optional Protocol and all States were offered advice and technical assistance in that regard, some States appeared not to take their obligations seriously. Nevertheless, the Subcommittee remained fully committed to working constructively with those countries.

32. Another key obligation of States parties was to receive visits from the Subcommittee. Owing to a shortage of staff, however, the Subcommittee had been forced to reduce the number of visits in the past year by 20 per cent, to about eight visits. The Subcommittee should visit countries with roughly the same frequency as the reporting cycles of other human rights treaty bodies, but it was currently able to visit countries every 11 years, which was insufficient. The point of prevention was not to investigate allegations or hold individuals or countries to account, but rather to make constructive recommendations to reduce the risk of ill-treatment and engage in discussion to bring about positive change. Nevertheless, some States still considered visits of the Subcommittee to be hostile in nature. The integrity of the Optional Protocol system was dependent upon the Subcommittee being able to carry out visits at the time and to the places of its choosing, to have unfettered access to all persons and all parts of detention facilities and to speak in privacy with detainees.

33. In a welcome development, the trend of States showing reluctance to accept visits had been reversed, and most States now understood and accepted the mandate. However, the Subcommittee had decided to terminate its visit to Rwanda owing to its inability to undertake the visit in accordance with the terms of the Optional Protocol. In the past year, visits had been undertaken to Belize, Burkina Faso, Kyrgyzstan, Morocco, Poland, Portugal, Spain and Uruguay. Future visits to Burundi, Costa Rica, Liberia, Senegal and Switzerland had been announced.

34. The work of the Subcommittee could be even more effective were more time and resources to be devoted to the implementation of recommendations. Post-visit dialogues could be improved considerably and were best conducted in person with a report to consider, although that tended to be the exception and not the rule. In that regard, the Subcommittee now benefited from some support from OHCHR.

35. The Subcommittee, in its reports, set out in some detail the problems identified during its visits. The content of the reports rarely came as a huge surprise to the States themselves, showing that States were aware of the realities of their detention systems and that the Subcommittee was able to identify those realities. Such shared understanding provided a good basis for constructive discussion. However, the fact that those realities were known but no action had been taken was dispiriting and reinforced the need for the Optional Protocol and its mechanisms to serve as a catalyst for change.

36. The Subcommittee currently had only three weeks per year for its plenary session, which was not enough time. Although an additional week of plenary meetings had been approved in 2017, no additional staffing resources had been provided, rendering it impossible to use the additional time. It was most unfortunate that the General Assembly had given the appearance of action but had ensured that in reality nothing changed.

37. During the year, the Subcommittee had concluded an understanding with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on ways to enhance its work with the Council of Europe, as mandated by article 31 of the Optional Protocol. The Subcommittee had also contributed to the publication *Preventing Torture: The Role of National Preventive Mechanisms* and the Alliance for Torture-Free Trade. Following a strategic pause, the Special Fund established by the Optional Protocol had been able to resume its grant programme thanks to donations from Argentina, Czechia, France, Germany, Norway and Spain.

38. **Ms. Cruz** (Spain) said that the Subcommittee had recommended that the national preventive mechanism of Spain, which was part of the Office of the Ombudsman, should enjoy operational and financial autonomy and have more staff. The Ombudsman Act guaranteed the autonomy of the Office from other authorities, and the Ombudsman received a national budget allocation. Spain welcomed the professionalism and spirit of cooperation with which the Subcommittee

had carried out its visit to the country in September 2017. The Subcommittee had submitted its report and recommendations to Spain in March 2018. Spain had responded to the recommendations and published the report and its reply.

39. **Ms. Přikrylová** (Czechia) said that, in view of the forthcoming election of new members to the Subcommittee, States parties should respect the criteria set out in article 5 of the Optional Protocol, including the requirement of the independence of candidates. She asked for the best examples of cooperation from the recent visits of the Subcommittee to States parties. She would be interested to know whether any States parties were refusing to cooperate in the preparation of the Subcommittee's visits.

40. **Mr. Forax** (Observer for the European Union) said that his delegation would be interested to learn how the access of national preventive mechanisms to places where people were being deprived of liberty could be improved. He asked for further elaboration on the preventive package mentioned earlier, in particular in relation to the question of insufficient resources. How could the European Union be of help in that context?

41. **Mr. Olsen** (Denmark) asked to hear more about specific and prevalent trends that hindered national preventive mechanisms in fulfilling their mandate. With regard to the need for national preventive mechanisms to be empowered to deliver the whole preventive package, he wished to know where specifically States parties should focus in order to ensure that national preventive mechanisms were able to fulfil their entire mandate.

42. **Sir** Malcolm **Evans** (Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) said that, to be effective, national preventive mechanisms must not only be independent and sufficiently well resourced, but also have a clear mandate, preferably enshrined in law. It was equally important for mechanisms to understand the nature of preventive visiting and be able to visit places of detention to gain a direct understanding of the situation. They should also be able to engage with the State at a high level about laws, policies and practices relating to places of detention. More could be done to ensure that they had sufficient influence in that regard. A frequent obstacle to the effective work of national preventive mechanisms was the lack of a tradition of openness of places of detention. As an international body, the Subcommittee had a vital role to play in leading the discussion of how to get the most out of national preventive mechanisms. The international community should support the creation of networks of national preventive mechanisms in regions and subregions to enable mechanisms to support and learn from each other.

43. With regard to best practices of cooperation, it had been pleasing to note the reduction over the past year in pushback against the exercise of the Subcommittee's mandate. Visits were greatly facilitated when the Subcommittee was able to establish contact with the State party as early as possible. However, States parties often submitted the information requested by the Subcommittee to help to prepare for its visits too late, making the process more difficult than it should be. The sooner preparatory conversations began, the sooner the Subcommittee could begin to build relationships, which would hopefully enhance the post-visit dialogue, the most important part of the process. Visits should be seen as a holistic exercise with a number of elements feeding into prevention. All those elements must be valued, not just the arrival and departure of the Subcommittee, but also the preparations for, conduct of and follow-up to the visit. The Subcommittee looked forward to its post-visit dialogue with Spain following its recent country visit. It encouraged all States to consider publishing visit reports and replies.

44. **Mr. Melzer** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), said that his recent activities had included country visits to Serbia and Kosovo,[1] Argentina and Ukraine, and new invitations had been received for visits to the Comoros, Mongolia and Paraguay, while invitations to visit Libya and Spain remained pending. States that had not yet responded to requests for visits were encouraged to do so. Although communications continued to be transmitted daily on behalf of individuals at risk of torture and other ill-treatment, the insufficient resources available to special procedures mandate holders impeded their ability to take up cases and effectively follow up on States' responses or lack thereof. Continued support from Norway and Switzerland had been instrumental to the preparation of his thematic reports to the Human Rights Council (A/HRC/37/50) and the General Assembly (A/73/207) and to the impact generated by extended social media outreach.

45. Presenting his interim report on the seventieth anniversary of the Universal Declaration of Human Rights: reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/73/207), he said that, despite unprecedented efforts and achievements by States since 1948 towards implementing the absolute prohibition of

[1] References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

torture and ill-treatment, the practice continued with impunity throughout the world. The report outlined five areas of primary concern covering the numerous and multilayered reasons for that reality. Recommendations on how best to address those challenges were focused primarily on measures to be taken at the national level.

46. The increasing acceptance by some segments of public opinion, including parts of the political establishment, that such an abhorrent practice should be permissible in certain circumstances or against certain groups, was alarming, as were the dehumanizing ideologies and practices accompanying that trend. With the world currently at risk of backsliding on one of the most important achievements in human history, namely, the universal recognition of the absolute, non-derogable and peremptory prohibition of torture and ill-treatment under the same terms as the prohibitions on slavery and genocide, it was essential to address those challenges in order to deliver on the promise, made seventy years earlier, of human dignity for all members of the human family.

47. **Mr. de Souza Monteiro** (Brazil), agreeing that migration should not be seen as a threat that might exempt States from complying with international laws and peremptory norms, said that the impacts of the prolonged or indefinite detention of migrants, especially those in vulnerable situations, could amount to torture and ill-treatment. Brazil had enacted legislation based fully on the protection of the human dignity of migrants and repealing both the criminalization of migrants and the forcible deterrence of migration flows. He asked how States could develop reliable systems of data collection to foster a better understanding of the prevalence of victims of torture and ill-treatment among migrant populations, the causes of and circumstances for such abuse, the specific needs of the victims and their experiences upon return.

48. **Mr. Tennakoon** (United Kingdom) said that torture continued to be committed with impunity in many parts of the world. The United Kingdom abided by its commitments under international law and expected all countries to comply with their legal obligations to respect human rights regardless of the conditions and status of the individual. As a long-standing supporter of the Convention and its Optional Protocol, his country urged States that had not yet done so to consider signing, ratifying and implementing both. He wondered what action States could take to broaden participation in the Optional Protocol.

49. **Mr. Castillo Santana** (Cuba) said that, prior to the Cuban revolution in 1959, torture and cruel, inhuman and degrading treatment had been commonly practiced by the authorities, culminating in the bloody dictatorship of Fulgencio Batista, whose henchmen had received safe haven in the United States of America. Since becoming a State party to the Convention against Torture in 1995, Cuba had complied with its obligations by taking measures to prevent the occurrence of the acts prohibited under the Convention. His delegation would welcome more details on what mechanisms could be implemented or avenues taken to ensure an end to, and justice and compensation for, serious violations of human rights and acts of torture committed by the United States at the Guantanamo Bay detention camp, on territory usurped from his country.

50. **Mr. Kashaev** (Russian Federation) said that some States, for political interests and aims, were increasingly violating the principles of the rule of law and the integrity and independence of the judicial system and denying people access to justice. As a result, cases of torture went unpunished and victims were able neither to appeal against the actions of the authorities nor to receive compensation. The clearest example of that was the infamous Guantanamo prison, which, despite the claims of the United States of America to be a global leader in human rights, remained a pressing concern with respect to bringing to justice those responsible for authorizing and using torture methods in interrogations of terrorism suspects. In Ukraine, the law enforcement bodies continued to abduct and illegally detain citizens, often subjecting them to cruel treatment, torture and violations of their procedural rights.

51. The principle of extraterritoriality continued to be invoked as a reason for abducting people from third countries, counter to international law and often resulting in inhuman treatment. Gross violations of the rights of the Russian citizens Konstantin Yaroshenko and Victor Bout, who had been abducted from third countries by the United States of America, were systematically carried out by the United States authorities.

52. **Ms. Fréchin** (Switzerland) said that the prohibition on torture continued to be violated too frequently, with legislation often not implemented and the absolute and non-derogable nature of the prohibition guidelines not respected, under the guise of combating terrorism. Any violation of the principle of non-refoulement with the goal of ending migratory flows should also be renounced. Switzerland was concerned about the outsourcing of acts of torture, as described by the Special Rapporteur, and urged heightened vigilance over the contracting out of State functions. Noting persistent inequalities with regard to torture and exposure to violence and abuse, she also wondered which among the groups of persons in vulnerable or irregular situations faced the highest risk of ill-treatment.

53. **Ms. Diedricks** (South Africa) said that her delegation agreed that non-State actors, in particular transnational corporations and other business enterprises, should be held accountable for violence and abuse carried out against individuals and populations and that the elaboration of a legally binding instrument regulating such activities should become a priority for all States. While domestic violence and corporal punishment were also deplorable acts that should not be tolerated under any circumstances, they should not be equated with torture. States should, however, be held accountable and condemned for their increasingly repressive human rights policies and practices worldwide and the growing number of detentions without due process. With regard to increasing public tolerance and the justification of acts of torture and other ill-treatment, including the use of language meant to inflame hatred against others, States should act responsibly, as such acts were unjustifiable hate crimes that should be punishable by law.

54. **Ms. Přikrylová** (Czechia) requested clarification on how States could support the mandate of the Special Rapporteur in ensuring that fully independent national, international and non-governmental complaint, investigation and monitoring mechanisms, established in accordance with the Optional Protocol, were given full access to places where people might be deprived of liberties or otherwise exposed to torture or ill-treatment.

55. **Mr. Yaremenko** (Ukraine) said that Ukraine had no access to places of detention in Crimea and in some parts of the Donetsk and Luhansk regions, which had been temporarily occupied by the Russian Federation since 2014. According to reports by the Office of the United Nations High Commissioner for Human Rights, in particular the report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 13 September 2017 to 30 June 2018, State agents of the Russian Federation in Crimea continued to apply prohibited practices against people in detention or in the time between their de facto deprivation of liberty and formal placement in detention. Calling attention to the case of Oleg Sentsov, a political prisoner who had been illegally transferred from Crimea to the Russian Federation with no access to Ukrainian government or consular representatives, he requested information on what could be done, under existing rules and in accordance with the Special Rapporteur's mandate, to establish access to people who had been illegally detained, both in the territory of the Russian Federation and in the occupied Ukrainian territories.

56. **Ms. Rasheed** (Observer for the State of Palestine) said that the Palestinian people, including children, living under military occupation in occupied Palestine for fifty years, had been subjected to ill-treatment and, in some cases torture, especially while being held in Israeli prisons and detention centres. Under the Fourth Geneva Convention, States' obligation to protect vulnerable persons from all acts of violence and threats to their safety and well-being also extended to Occupying Powers. She asked what measures must be taken by the international community to compel Israel to put an end to its continued use, with complete impunity and in violation of international, humanitarian and human rights law, of all forms of violence, including physical and psychological torture, against Palestinian detainees and prisoners and to hold the Occupying Power accountable for its actions, especially against Palestinian children. Her delegation firmly supported the Special Rapporteur's recommendation on establishing preventive safeguards against torture and ill-treatment throughout all institutions, mechanisms and procedures.

57. **Mr. Forax** (Observer for the European Union) said that the European Union was strongly committed to ensuring respect for the universal and absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment and that it found the Universal Declaration of Human Rights as relevant and important currently as it had been upon its adoption 70 years earlier. He would be grateful if the Special Rapporteur could identify one or two of his recommendations that could form a starting point for State parties and provide examples of best practices in the field of data collection that would help in better understanding of the prevalence of torture and ill-treatment.

58. **Mr. McElwain** (United States of America) said that acts of torture and ill-treatment dehumanized victims, perpetrators and the societies in which they were tolerated. The United States categorically condemned all acts of torture and other cruel, inhuman or degrading treatment or punishment, as well as evidence of their recurrence worldwide, and reaffirmed its commitment to respecting the absolute prohibition on those practices. Regretting the existence of many examples of such practices and citing particular instances in the Russian Federation, Syria, China and Venezuela, the United States called on all countries to uphold their international obligations and commitments, investigate all credible allegations of torture and hold accountable any individuals found responsible for such acts. It would be useful to learn what steps could be taken to involve civil society and other third-party actors in preventing such practices.

59. **Mr. Olsen** (Denmark) requested guidance on how Government leaders could best combat the violent and discriminatory political narratives hindering the

absolute prohibition of torture and ill-treatment and how the Convention against Torture Initiative, launched in 2014 by five States, including Denmark, and other similar organizations could work to increase the universal ratification and improved implementation of the existing international framework.

60. **Ms. Solbraekke** (Norway) said that respect for the dignity and sanctity of life was fundamental in a society governed by law. Torture was the most serious violation of the right to personal integrity and dignity and its widespread use gave cause for great concern. Having taken note of the reasons given by the Special Rapporteur for the lack of full implementation of its prohibition and his concerns regarding counter-terrorism and national security, her delegation would appreciate further details on how States could be encouraged to reaffirm the absolute and non-derogable character of the prohibition and to open investigations into allegations of torture and ill-treatment.

61. **Mr. Aldahhak** (Syrian Arab Republic) said that Member States must not ignore the ongoing inhuman treatment of the Arab population of the Arab territories occupied by Israel, including the occupied Syrian Golan. Syria strongly condemned the numerous human rights violations that had been perpetrated by the United States of America over many decades in many countries. The United States had, inter alia, tortured detainees held at Abu Ghraib and Guantanamo prisons and at secret detention sites, and it continued to use illegal weapons, including white phosphorus, against civilian populations, including civilians in Syria. It also strongly condemned the imposition of unilateral coercive measures by the United States and some of its allies, which amounted to acts of collective punishment against entire populations, as well as the collective punishment of refugees, including refugee children, who were separated from their parents by the authorities in flagrant violation of the most fundamental human rights principles. The representative of the United States of America had no right to lecture other States on the importance of human rights while his own Government continued to perpetrate systematic human rights abuses against civilians worldwide.

62. **Mr. Melzer** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that it was important that support for the absolute and non-derogable prohibition of torture and ill-treatment remained universal. While he shared concerns expressed about specific contexts, he could not speak about situations in countries he had not visited or about which he had no detailed knowledge. With regard to how international law should be enforced in specific cases, the international community must take his reports into account and decide on the appropriate actions to take, through the mechanisms established for that purpose.

63. While best practices on organizing data collection systems might vary according to needs and context, it was important to collect systematic and representative data in order to ensure individualized assessment procedures for every person claiming protection from torture or ill-treatment. Given that millions of people currently on the move were already known to have been victimized, it was essential to avoid fast-track proceedings through readmission agreements that automatically deported people with blanket diplomatic assurances. Border protection authorities in first contact with arriving migrants, especially those operating on vessels far from mainland borders, must be trained in conducting individualized assessments in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), so that victims could be identified and the psychological and physical traces of torture assessed through an approved and universally recognized scientific and medical procedure.

64. There was no simple answer to the question of who, globally, faced the highest risk of torture and ill-treatment. The key lay in identifying specific patterns: whichever group was most likely to be marginalized in a given context was the one most exposed to prejudice, ill-treatment and abusive practices, at all levels of the judicial system. It was therefore important for political narratives to avoid marginalizing and discriminatory language that increased those tendencies and for policies to proactively address those risks in all mechanisms where such treatment could occur.

65. While violence by non-State actors did not automatically equate to torture and ill-treatment, as in the case of domestic violence, the involvement of the State did not have to be direct by overt act for the Convention against Torture to apply; its consent could suffice. Therefore, where such non-State actions or practices were known and widespread but government authorities refused to intervene to protect their populations against them, there was an arguable case for a violation of the prohibition, which the Special Rapporteur would make an effort to clarify further in his work.

66. The strongest avenue for States towards improving independent monitoring was through the Subcommittee on Prevention of Torture, which had greater resources than his mandate, combined with the national preventive mechanisms foreseen under the Optional Protocol.

Encouraging the ratification of both instruments by States was therefore an important step, as it demonstrated their willingness to take their obligations under the Convention seriously and to implement them in practice through the establishment of the duty to create such national mechanisms. There was, however, no blanket strategy for encouraging ratification and implementation by States. In situations of armed conflict, including in detention contexts, the International Committee of the Red Cross was in the best position to monitor and prevent ill-treatment, which could also involve non-State actors such as armed groups that would not feel bound by treaties and conventions.

67. The most important of his recommendations on migration would be the development by States of a system of sustainable pathways for safe, orderly and regular migration on the basis of protection, human rights and non-discrimination. The current lack of such a system pushed millions of migrants into involvement with smugglers and led to a vicious cycle of insecurity and exposure to abuse and law-breaking and a high prevalence of ill-treatment. Its creation should also be accompanied by the decriminalization of irregular migration, even while maintaining the rights of States to legally control the phenomenon.

The meeting rose at 5.10 p.m.